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## BONNER COUNTY

### PLANNING DEPARTMENT

Martin E. Taylor, Planning Director

October 22, 1997

William F. Caton, Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

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SUBJECT: Federal Communications Commission Proposed Rulemaking (FCC 97-296)  
MM Docket No. 97-182 ("Rule")

Dear Mr. Caton:

In response to the referenced proposed Rule, I offer the following comments for the Federal Communications Commission's consideration:

#### Proposal

The Rule proposes to "preempt certain state and local zoning and land use ordinances which present an obstacle to the rapid implementation of digital television ("DTV") service. Such ordinances may also serve to unduly inhibit the resiting of antennas made necessary by the implementation of DTV or stand as an obstacle to the institution and improvement of radio and television broadcast service generally." (FCC 97-296, Notice of Proposed Rule Making, I. Introduction, Page 1)

#### Response

The *Local Land Use Planning Act of 1975* ("Act") was enacted to promote the "health, safety, and general welfare of the people of the state of Idaho..." (Idaho Code, Section 67-65, et seq.) Specifically, the Act requires that governing boards implement a comprehensive land use plan ("plan") and establish zoning in accordance with the adopted plan. (I.C., §§67-6508 and 67-6511) The Act provides an opportunity for governing boards to require "special or conditional use permits" for certain land uses, thereby allowing for the study of "social, economic, fiscal, and environmental effects of the proposed special use," and further provides that "interested persons shall have an opportunity to be heard." (I.C., §67-6512)

Pursuant to, and consistent with, the Act, Bonner County adopted a plan and enacted ordinances and standards for the placement of "radio and television towers." (Bonner County *Resolution*

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*Adopting Comprehensive Plan*, Instrument 202678, Bonner County Records; Bonner County Ordinances 140, 145 and 186, codified at Bonner County Revised Code, §§12-740[d] and 12-840[g])

The purpose of requiring a conditional use permit for the placement of "radio and television towers" is to promote the public's interest and protect property rights. These purposes are achieved by providing for due process through public hearings, and by attaching to conditional use permits conditions:

- (1) Minimizing adverse impacts on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;
- (5) Designating the exact location and nature of development;
- (6) Requiring the provision for on-site or off-site public facilities or services;
- (7) Specifying time limits that the use will be permitted;
- (8) Providing for setbacks that are greater than the minimum standards set forth in this Title;
- (9) Establishing landscaping requirements;
- (10) Providing for sight restrictions; and
- (11) Providing for safeguards to protect adjacent property. (I.C., §67-6512; Bonner County Ordinance 246, codified at Bonner County Revised Code, §12-2130)

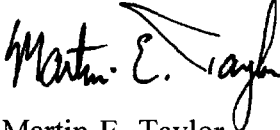
In the interest of facilitating the conditional use permit process for the placement of *new* towers/antennas, Bonner County has implemented a 90 day process whereby local, state and citizen review occurs consistent with statutory due process standards. (I.C., §67-6512) This process can be foreshortened if the applicant submits a *complete* conditional use permit application, or if the applicant *readily responds* to local or state agency requests for additional information, should the application be determined "incomplete" by reviewing agencies. Co-locating a dish or antenna on an existing facility (tower) is typically *not* subject to conditional use permitting, as co-locating is *not* considered an expansion of a conditional use. (It is the *tower* that is typically the subject of the agency review and public hearing, *not* the dish or antenna attached thereto.) Further, if applicants simply apply for the required conditional use permit *earlier* in the construction scheduling process, the contractors can then factor in, anticipate and budget for a 90 day review process. (Local agencies can be of limited assistance to a contractor inquiring about permit requirements the last week in May for a project scheduled to be built the first week in June...)

### Summary

Federal Communications Commission Proposed Rulemaking MM Docket No. 97-182 is contrary to the land use authority provided to political subdivisions within Idaho; conflicts with the goals and objectives of Idaho's *Local Land Use Planning Act of 1975*; and is inconsistent with the provisions of Bonner County Revised Code. In addition, the proposed Rule raises a number of questions concerning the scope of *any* preemption of state and local laws and ordinances, and

may create a harmful precedent which the FCC could in turn use to further restrict local zoning authority over other forms of communication facilities, such a cellular towers. Lastly, the proponents of the proposed Rule have not demonstrated that the "rapid implementation of digital television" is necessary to protect or promote the public's health, safety or general welfare. Accordingly, the proposed Rule should be disapproved.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin E. Taylor". The signature is fluid and cursive, with a large, sweeping initial "M".

Martin E. Taylor  
Planning Director

Attachments: Nine (9) copies of 10/22/97 Taylor to Caton letter

c: Larry A. Hippler, Aviation Technician  
*Airport Planning and Development*  
Idaho Transportation Department, Aeronautics  
P.O. Box 7129  
Boise, Idaho 83707-1129

John W. Pestle, Patrick Miles, Randall W. Kraker, Teresa S. Decker  
*Varnum, Riddering, Schmidt & Howlett, Attorneys at Law*  
P.O. Box 352  
Grand Rapids, Michigan 49501-0352